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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/041,519 04/01/93 NEST

6 0085-004

EXAMINER

SALATA, C

18M2/0920

ART UNIT

PAPER NUMBER

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INTELLECTUAL PROPERTY DEPARTMENT
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21

1811

DATE MAILED:

09/20/93

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

This application has been examined Responsive to communication filed on 4/1/93 This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. Notice of References Cited by Examiner, PTO-892.
2. Notice of Draftsman's Patent Drawing Review, PTO-948.
3. Notice of Art Cited by Applicant, PTO-1449.
4. Notice of Informal Patent Application, PTO-152.
5. Information on How to Effect Drawing Changes, PTO-1474.
6.

Part II SUMMARY OF ACTION

1. Claims 1-9 and 29-30 are pending in the application.

Of the above, claims _____ are withdrawn from consideration.

2. Claims _____ have been cancelled.

3. Claims _____ are allowed.

4. Claims 1-9 and 29-30 are rejected.

5. Claims _____ are objected to.

6. Claims _____ are subject to restriction or election requirement.

7. This application has been filed with Informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. Formal drawings are required in response to this Office action.

9. The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are acceptable; not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).

10. The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been approved by the examiner; disapproved by the examiner (see explanation).

11. The proposed drawing correction, filed _____, has been approved; disapproved (see explanation).

12. Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has been received not been received been filed in parent application, serial no. _____; filed on _____.

13. Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. Other

EXAMINER'S ACTION

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1. Claims 1-9^{and 29-30} are pending in the present application.

2. Claims 1-9 and 29-30 are rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103 as obvious over Prigal for the reasons of record and those set forth below.

The mere fact that column 5 of the patent describes that the physical makeup of the patentee's emulsion consists of globules of particles of a dispersed phase surrounded by oil is not sufficient to warrant removal of this ground of rejection.

Claims 1-9 and 29-30 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103 as obvious over either Glass et al. or Cantrell et al. for the reasons of record and those set forth below.

Applicant urges that Glass does not teach "compositions or methods wherein the oil droplets are substantially all less than one micron in size" and that Cantrell "neither recognizes nor discloses the use of advantageous particle size".

However, the question is not merely what the references expressly or individually teach, but what they would have suggested to one of ordinary skill in the art at the time applicant's invention was made: the references must be considered in their entirety, and such consideration is not limited to the specific working examples.

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3. No unexpected or unobvious results are noted and the claims must be refused.

4. No claims are allowed.

5. This is a continuation of applicant's earlier application S.N. 07/885905. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds or art of record in the next Office action if they had been entered in the earlier application.

Accordingly, THIS ACTION IS MADE FINAL even though it is a first action in this case. See M.P.E.P. § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carol A. Salata, Ph.D. whose telephone number is (703) 308-4001.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Lester L. Lee

LESTER L. LEE
PRIMARY PATENT EXAMINER
ART UNIT 186
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